

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Patent Application of:)	Mail Stop Appeal Brief – Patents
)	
Ralph S. HOEFELMEYER et al.)	Group Art Unit: 2446
)	
Application No.: 10/699,824)	Examiner: J. Avellino
)	
Filed: November 4, 2003)	
)	
For: SYSTEMS AND METHODS FOR)	
PROVIDING SELF-COMPILING,)	
PEER-TO-PEER ON-LINE GAMING)	
)	

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REPLY BRIEF UNDER 37 CFR § 41.41

This Reply Brief is submitted in response to the Examiner's Answer, dated February 4,
2009.

I. STATUS OF CLAIMS

Claims 1, 3-16, and 18-31 have been finally rejected in the final Office Action, dated July 30, 2008. Claims 2 and 17 were previously canceled without prejudice or disclaimer. Claims 1, 3-16, and 18-31 are the subject of the present appeal. These claims were reproduced in the Claim Appendix of the Appeal Brief filed on November 7, 2008.

II. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

A. Claims 1, 3-16, and 18-31 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent Application Publication No. 2004/00002384 to Multerer et al. (hereinafter “MULTERER”) in view of U.S. Patent Application Publication No. 2002/0013882 to Ko et al. (hereinafter “KO”), and further in view of U.S. Patent No. 6,981,251 to Kreller et al. (hereinafter “KRELLER”).

III. ARGUMENTS

In the “Response to Arguments” section of the Examiner’s Answer (pp. 12-15), the Examiner reiterates many of the allegations that are presented in the “Grounds of Rejection” section of the Examiner’s Answer and the final Office Action, dated July 30, 2008. Thus, Appellants’ arguments presented in the Appeal Brief, filed November 7, 2008, are applicable to those allegations. Appellants submit the following additional remarks.

1. Claims 1, 3-6 and 8-11.

In the Appeal Brief, Appellants demonstrated that MULTERER, KO, and KRELLER, whether taken alone or in any reasonable combination, do not disclose or suggest installing network access software and peering software using a configuration file, as recited in claim 1 (see, pp. 7-12 of the Appeal Brief). In response, the Examiner alleges that it is the combination of MULTERER, KO, and KRELLER that discloses this feature, and that Appellants merely focused on what the individual references teach and not on what the combination teaches (Examiner’s Answer, p. 12). Appellants respectfully disagree with the Examiner’s allegation and submit that the combination of MULTERER, KO, and KRELLER does not disclose or suggest installing network access software and peering software using a configuration file, as recited in claim 1.

Specifically, the Examiner alleges that MULTERER inherently teaches installing peering software, since otherwise there would be no software to establish a peering session (Examiner’s Answer, p. 12). Claim 1 does not recite installing peering software. Claim 1 specifically recites installing network access software and peering software using a configuration

file. The configuration file is generated based on detecting a hardware configuration of a first network device. MULTERER does not disclose or suggest, either explicitly or inherently, installing peering software using a configuration file that is generated based on detecting a hardware configuration of a first network device, as recited in claim 1.

In attempting to demonstrate that it is the combination of MULTERER, KO, and KRELLER that discloses this feature of claim 1, the Examiner alleges that MULTERER discloses network access and peering software, and that KO discloses compiling and installing executable applications based on a hardware listing, and that the combination of MULTERER's network and peering software and the techniques of compiling and installing executable application, as described in KO, together discloses the above-noted feature of claim 1 (Examiner's Answer, p. 13). Appellants respectfully disagree with the Examiner's allegation.

KO discloses generating a list of hardware devices, choosing an operating system, passing the list of hardware devices to the operating system, and installing hardware drivers based on the hardware list (see paragraphs [0036]-[0040] of KO). The Examiner alleges that the hardware list of KO corresponds to the configuration file, as recited in claim 1 (Examiner's Answer, p. 5). MULTERER discloses establishing a peer-to-peer gaming session (see paragraph [0053] of MULTERER), which the Examiner alleges implies inherently discloses installing peering software. However, KO discloses using the list of hardware for installing hardware drivers. It is not clear, and the Examiner does not explain how, the list of hardware of KO could be used to install peering software. For example, neither KO alone, MULTERER alone, or a combination of KO and MULTERER disclose or suggest how to select, configure, or install peering software, let alone that a list of hardware devices could be used to install peering

software, as would be required by claim 1, based on the Examiner's interpretation of MULTERER and KO.

Furthermore, with respect to the reasons for combining MULTERER and KO, the Examiner only provides the following allegation (Examiner's Answer, p. 5):

Ko discloses installing drivers for each device on the user's computer, since Multerer discloses using a network access device, one of ordinary skill would naturally understand that a network driver would be installed as well.

Appellants submit that the Examiner did not provide any reasons for combining the installation of peering software, as allegedly disclosed by MULTERER, with the list of hardware disclosed by KO, let alone the kind of articulated reasoning with a rational underpinning that is required for establishing a *prima facie* case of obviousness. See, for example, KSR International Co. v. Teleflex Inc., 550 U.S. 398, 127 S. Ct. 1727, 82 U.S.P.Q.2d 1385 (2007) (citing In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)).

Therefore, the Examiner's allegation, that it is the combination of MULTERER and KO that allegedly discloses the above-noted feature of claim 1, is not supported by the reasoning provided in the rejection of claim 1. Appellants submit that one of ordinary skill in the art at the time of the invention would not know how to use the hardware list of KO to install the peering software allegedly disclosed by MULTERER.

For at least the reasons given above and for those reasons given in the Appeal Brief, Appellants respectfully request that the rejection of claims 1, 3-6 and 8-11 under 35 U.S.C. § 103(a) based on MULTERER, KO, and KRELLER is improper. Accordingly, Appellants request that the rejection of claims 1, 3-6 and 8-11 be reversed.

IV. CONCLUSION

In view of the foregoing arguments and those arguments presented in the Appeal Brief, Appellants respectfully solicit the Honorable Board to reverse the Examiner's rejections of claims 1, 3-16, and 18-31.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,

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